SINGAPORE REPORTS

KEE AH TEE & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Tan Ah Tah and Choor Singh JJ.) June 4, 1971]

[Singapore — Criminal Appeal No. 9 of 1970]

Penal Code, ss. 300, 302, 34 — Murder — Common intention.

Criminal Law and Procedure — Trial of capital offences before two judges — Criminal Procedure Code (Cap. 113, 1970 Ed.) s. 185.

Criminal Law and Procedure — Admissibility of statements to police — Exceptions — Power of magistrate to record statements — Criminal Procedure Code (Cap. 113, 1970 Ed.) ss. 121(5), 123, Schedule E.

Criminal Law and Procedure — Objection to admissibility of statements — "Trial within a trial".

The appellants were tried before the High Court on two charges of committing murder, punishable under section 302, read with section 34, of the Penal Code. They were tried by a court consisting of two judges of the High Court, in accordance with the provisions of section 185 of the Criminal Procedure Code.

At the trial both appellants raised strenuous objections to the admission by the prosecution of four statements made by the appellants after their arrest. Two of them were statements made, one by each appellant, and recorded by magistrates under the provisions of section 123 of the Criminal Procedure Code. The other two statements were made by the appellants during the course of police investigation and were made to a police inspector and which statements were *prima facie* admissible in evidence under the provisions of section 121 of the Criminal Procedure Code. Reliance was placed principally on the proviso to section 121(5) and Schedule E of the Code. Accordingly the trial court conducted a "trial within a trial" to determine their admissibility and after a hearing which lasted several days the court decided to admit in evidence all the four statements.

At the conclusion of the trial the court found both appellants guilty on both charges and imposed the mandatory death sentence on them. They appealed against the convictions and sentences.

Held, dismissing the appeal: (1) there was ample and cogent evidence to support the conviction of both appellants of the two charges of murder;

(2) there was clearly more than sufficient independent evidence connecting each of the appellants with the two killings and implicating each of them, and which confirms in some material particular not only the evidence that the crimes had been committed but also that the appellants committed them;

(3) the learned trial judges did not exercise their discretion wrongfully or in any manner which was contrary to law, on the evidence before them. The issue as to admissibility was fully canvassed before them at the trial within a trial;

(4) in those circumstances, the present court was precluded from interfering with the trial court's exercise of its discretionary powers, unless convinced that there was no proper or sufficient evidence to support the trial court's decision or unless it was satisfied that the trial court acted on wrong principles.

Principles in *R.* v. *Baskerville*(1) applied as regards the law on corroboration.

[Editorial Note: As we go to press it was reported that the appellants' were refused special leave to appeal by the Privy Council.]

Case referred to:-

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658.

COURT OF CRIMINAL APPEAL.

Yin Ee Kheng for the first appellant.

Leo Fernando for the second appellant.

Isaac Paul Retnam (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: The first appellant, Kee Ah Tee alias Tan Chooi Watt, and the second appellant, Liew Kim Siong, were tried before the High Court on the following two charges:—

"That you, 1. Kee Ah Tee @ Tan Chooi Watt
2. Liew Kim Siong

on or about the 15th day of June, 1969 at about 3.15 p.m. at No. 20, Upper Bukit Timah Road, Singapore, in furtherance of the common intention of you both, committed murder by causing the death of one Kan Sze-hing (f), and you have thereby committed an offence punishable under section 302 of the Penal Code read with section 34 of the said Code (Chapter 119).

2. You, 1. Kee Ah Tee @ Tan Chooi Watt
2. Liew Kim Siong

are charged that you, on or about the 15th day of June, 1969 at about 3.15 p.m. at No. 20, Upper Bukit Timah Road, Singapore, in furtherance of the common intention of you both, committed murder by causing the death of one Leung Fung (m), and you have thereby committed an offence punishable under section 302 of the Penal Code read with section 34 of the said Code (Chapter 119)."

As the offence of murder is punishable under section 302 of the Penal Code with death, the appellants were tried by a court consisting of two judges of the High Court in accordance with the provisions of section 185 of the Criminal Procedure Code. At the conclusion of the trial the court found both appellants guilty on both charges and imposed the mandatory death sentence on them. They now appeal against their convictions and sentences.

The facts of the case are these. At about 3.15 p.m. on 15th June 1969 a female student Goh Bee Wang, who lived next door to the Singapore Feather Works Factory heard voices of a man and a woman. She recognised the voice of the woman as someone she knew and addressed as Ah Soh. Ah Soh is Kan Sze-Hing (f) the woman whose death is the subject matter of the first charge. Ah Soh was shouting for help and then she heard Ah Soh knocking at her door. She was frightened and peeped through a window of her house and saw Ah Soh outside by the door bleeding from her chest and hands. She saw Ah Soh (hereinafter referred to as "the female deceased") collapse and she thereupon ran out from her house by another door and telephoned the police.

The Singapore Feather Works Factory makes ducks feathers into garments and blankets and appears to have been operated by Leung Fung (hereinafter referred to as "the male deceased"), the person whose death is the subject matter of the second charge, with the help of three employees, one of whom was the female deceased and another of whom was one Kan Shing, the brother of the female deceased. Kan Shing arrived at the feathers factory on the day in question at about 3.45 p.m. and saw blood in front of the door of the factory, went inside and then went to the next door house where he saw the female deceased, his sister, lying on the ground face upwards, bleeding and

motionless outside the front door of that house. He then carried her to an ambulance which had arrived at the factory at the same time as him. The female deceased, the male deceased and Kan Shing all lived at the factory premises.

Kan Shing had since 1963 been working in this factory which gets its supplies of feathers from four or five persons who went there regularly to sell feathers. When purchases were made the male deceased, if he was at the factory, would pay for them and, if he was not in, Kan Shing would make payment with cash which the male deceased would leave with him. One such regular supplier of feathers was a person whom Kan Shing first came to know in April 1969 as Ah Choon, who used to come to the factory about once in eight to ten days.

The police also arrived at the scene at the same time as the ambulance and Kan Shing. Abdul Aziz bin Baba, a police sergeant, saw the male deceased lying motionless on his back a short distance from the feathers factory. This police officer saw a blood stained shirt at a spot a short distance from where the body of the male deceased was. A short while later a police inspector, Mr. Pereira, arrived and his attention was drawn to this shirt by the police sergeant. He then saw the body of the male deceased and proceeded from there to the feathers factory, entered it and saw a blood stained knife by the door. He then went to the next door premises and noticed some blood stains at the door in front of which the female student had seen the female deceased. He then went back to the feathers factory and outside the cement compound of the factory he followed a blood trail which led him back to the body of the male deceased. He examined the body and found it had four stab wounds on the chest and one on the back of the left shoulder. After this he went to the spot where the blood stained shirt was and took possession of it. It was a cream coloured shirt with long sleeves and with blood stains on it and its sleeves were turned inside out. A few of the buttons were missing and there were slight tears where the buttons were missing. From the breast pocket of the shirt, he recovered a laundry receipt from Southern Launderers, Dry Cleaners and Dyers.

This laundry receipt was issued by the owner of Southern Launderers, Dry Cleaners and Dyers in respect of a Dacron silver coloured shirt and a handkerchief handed in by a customer for cleaning. These two articles were still in his shop when the first appellant came on the morning of 16th June 1969 into the shop and told the owner he had lost his laundry chit. On being asked by the owner to identify from a showcase the articles he had handed in for cleaning, he pointed to the Dacron silver coloured shirt and just as he was writing his name and address to acknowledge receiving back the shirt he was arrested by the police who also impounded the shirt and handkerchief.

On the same afternoon the first appellant led the police to the general scene of the crime and pointed to a spot near where the police after a search found a knife. The blade of this knife had been filed on both the sharp cutting side as well as the blunt side so that it had jagged edges.

At or about the time when the murders were committed a labourer, Kathamuthu, was engaged in taking out mud from and cleaning a drain near the scene of the crime. When he was resting momentarily while doing this work he saw two male Chinese walking very fast one behind the other. He noticed the person at the rear was wearing a yellow long sleeved shirt and a pair of black shorts and saw him taking off his shirt and throwing it to his right. After they had gone he walked to the place where the shirt was lying, lifted it up with a stick, and noticed it had blood on it. He then placed the shirt back and walked in the general direction of the feather works factory and while walking he saw the male deceased whom he recognised as a man working in this factory. The male deceased was lying on the ground on his back and trembling. He then walked towards the house adjacent to this factory, the house of the female student and on the way he picked up a note book and a ball point pen which were lying on the grass. He placed them at the altar of a shrine nearby and proceeded towards the house he was going to. At the door of this house, which was the home of a clerk who had instructed him to clean the drain he was cleaning, he saw the female deceased whom he knew as a person working in the same factory as the male deceased. On seeing her he felt frightened and nervous and retraced his steps and came across many people who were workers of a rubber factory near the scene of the crime. Soon after that the police arrived at the scene. Two days later he asked someone to telephone the police and as a result a police inspector came and he handed the note book he had placed on the shrine to this police inspector. This note book was a 1967 pocket diary and in it appeared the name "Kee Ah Tee" written in English and in two pages of it a number "S71-07598".

The first appellant was issued with an identity card on 2nd November 1961 bearing the number S71-07598. This identity card was subsequently replaced by another one issued to the first appellant on 28th February 1969.

The blood stains on the yellow coloured long sleeved shirt seen by the labourer, Kathamuthu and taken poessession of by Inspector Pereira were, on examination by a chemist, found to be stained with human blood of the "A" group. The two knives, one found in the feathers factory and the other found by the police were on examination by the same chemist found to be stained with human blood but the stains were insufficient to enable a conclusive determination of the blood group to which they belonged. The blood of both deceased was found to belong to the "A" group.

Three days after the commission of the crime the second appellant was examined by a Dr. Kuldip Singh Wasan and found to have three minor injuries on his right hand. The first was a superficial incised wound one inch long just over the distal crease of the right index finger. The second was a linear abrasion three-quarter inch long over the right middle finger and the third was a linear abrasion one-quarter inch long over the right ring finger. These injuries could

have been caused by any sharp edged object and appeared to have been caused recently but were not less than 24 hours old.

Autopsies were performed on the bodies of both deceased persons. The male deceased had four stab wounds on the front of the chest and two on the back of the chest. The fatal wound was an "L" shaped gaping wound about 3 cm. long which had penetrated to a depth of over 9 cm. and had gone through the apex of the heart. All the wounds could have been caused by a single bladed weapon with a single cutting edge. The fatal "L" shaped wound had been caused by a twisting action of the blade, with the sharp edge of the blade as the pivoting axis, after the blade had penetrated into the body. This wound was consistent with it having been caused by the knift which the police recovered as a result of being led to the place of its recovery by the first appellant.

The female deceased had three stab wounds on the front of the chest and two other stab wounds on the left side. The fatal wound was the lowest of the three chest wounds and was 1.5 cm. long and had penetrated to a depth of 10 cm. entering the heart and also cutting into the liver. All these wounds could have been caused by a single blade weapon with one sharp edge and the other a blunt edge such as a knife similar to the one found by the door of the factory.

The first appellant was arrested on the morning following the commission of the crimes in circumstances we have earlier set out. The second appellant was arrested three days after the commission of the crimes in the early hours of the 18th June 1969. He had on the evening of the crimes told one Goh Kee Sun with whom he shared a flat in Tiong Bahru, that he had stabbed a woman and that he had sustained a cut.

All these facts were led in evidence by the prosecution at the trial. The prosecution also called as a witness one Chan Ah Lay also known as Ah Choon who was identified by Kan Shing as the person he knew as Ah Choon, a supplier of feathers to the factory. Ah Choon gave evidence that for about three months prior to 15th June 1969 he had regularly visited the factory and sold ducks' feathers to the male deceased who paid him in cash from a wallet he carried on his person. He noticed this wallet invariably contained "several hundreds of dollars". He came to know the first appellant about ten days before 15th June 1969.

Ah Choon's house was near a construction site where the first appellant worked and on his way to and from his house he had to pass this construction site and so came to know the first appellant and to meet him casually and over coffee at a work site coffee stall which they both frequented. In the course of one of these conversations the first appellant asked Ah Choon whether there was any opportunity to commit robbery at the feathers factory to which Ah Choon replied affirmatively. Two days before 15th June 1969 the first appellant again raised the subject of robbing the factory and suggested getting a third person to join in the venture. That evening at another coffee stall at Bukit Ho Swee, which is near Tiong Bahru, which he also frequented he met the second appellant whom he knew by the name, Ah Seow. While they were conversing, the first appellant joined them and he introduced the appellants to each other, introducing the first appellant as "Botak" and the second appellant as "Ah Seow". During the conversation the first appellant asked the second appellant if he would like to join in robbing the feathers factory and the second appellant agreed.

Two days later, at about noon on 15th June 1969 Ah Choon met the first appellant at the work site coffee stall and the latter suggested committing the robbery that same afternoon. At 1 p.m. they met the second appellant at the Bukit Ho Swee coffee stall and all agreed to carry out the robbery that afternoon. The first appellant then left saying he had to get some knives and subsequently rejoined them and all three proceeded to the 7½ m.s. Bukit Timah Road — off which is the feathers factory. Ah Choon remained by the side of the road near a bus stop and the other two crossed the road and entered a side road which led to the feathers factory. About half an hour later Ah Choon saw the other two running out to the main road. The first appellant was then clad only in a singlet. They turned left on reaching the main road and waved to Ah Choon to follow which he did and eventually caught up with them.

When they reached a road circus they obtained a lift from a passing lorry and while they were seated at the rear of this lorry the first appellant told Ah Choon that he had stabbed a male person and the second appellant said he had stabbed a female and had received a cut. At Havelock Road they dispersed. Of this witness Ah Choon the trial judges' assessment can best be described in their own words which read:—

"We formed the opinion that he was clearly playing down the role he took in the planning and preparation for this robbery in question.

This witness is clearly an accomplice and we were not prepared to act on any portion of his evidence unless amply corroborated."

The prosecution also tendered in evidence four statements made by the appellants after their arrest. Two of them were statements made, one by each appellant, and recorded by magistrates under the provisions of section 123 of the Criminal Procedure Code. The other two statements were made by the appellants during the course of police investigation and were made to a police inspector and which statements are *prima facie* admissible in evidence under the provisions of section 121 of the Criminal Procedure Code.

At the trial both appellants raised strenuous objections to the admission of all the four statements in evidence relying principally on the proviso to section 121(5) and Schedule E of the Criminal Procedure Code. Accordingly the trial court conducted a "trial within a trial" to determine their admissibility and after a hearing which lasted several days the court decided to admit in evidence all the four statements. At this juncture we do not propose to consider the contents of these four statements for reasons which will become apparent hereinafter.

The first appellant gave evidence at the trial. He admitted being a labourer working and living at the site of his work at Silat Road and that he came to know Ah Choon a few weeks before the 15th June 1969 in the circumstances as stated by Ah Choon. While denying that he initiated the idea of committing robbery, he admitted agreeing to accompany Ah Choon to rob the feathers factory but only on the condition that he would stand guard outside. He also admitted that at a coffee stall along Jalan Bukit Ho Swee Ah Choon introduced the second appellant to him as "Ah Seow" and that he was introduced to the second appellant as "Botak". He also agreed that the second appellant be asked to join in the proposed robbery, but his version was that the second appellant was told by Ah Choon to play the part of guard only. Again he admitted meeting Ah Choon at noon on 15th June 1969 at the work site coffee stall, but said that at the meeting Ah Choon had a parcel, cylindrical in shape with him and told him they could rob the factory that afternoon. He asked Ah Choon if only the two of them were going to which Ah Choon replied that they would go and look for the second appellant as well. He admitted they then went to the Bukit Ho Swee coffee stall and there met the second appellant who was asked by Ah Choon to join them in robbing the factory that afternoon to which the second appellant agreed. He said that the second appellant asked Ah Choon what the cylindrical parcel contained and was told it contained knives as it was necessary to be armed with knives to achieve their object.

According to the first appellant when they arrived at 7 m.s. Bukit Timah Road, all three of them crossed the main road with Ah Choon leading the way into the side road past a rubber factory until at a quiet spot near the feathers factory Ah Choon unwrapped the paper parcel and took from it two knives, one of which he first offered to the second appellant and on the second appellant refusing to take it, then to him which he also refused to accept telling Ah Choon he had come only to stand guard. When both appellants refused the knives, Ah Choon tucked both underneath his shirt and then took out a handkerchief and tied it over his face below his eyes as a sort of mask. Then Ah Choon led them to a place near the door of the feathers factory and told them to stand guard there and he saw Ah Choon enter the factory. After some time, as Ah Choon had not come back he went towards the door of the factory to find out why Ah Choon had taken so long to come out. It was quiet and as he came near the door he looked into the factory and just then a male Chinese rushed out and placed his hands on his (first appellant's) shoulders. As this person was about to fall he stretched out his hands to support him but on seeing blood on this person he pushed him away. He noticed blood on his own hands and on his own shirt and turned and ran, rubbing his stained hands on his shirt, towards where the second appellant was still waiting. While doing so he heard a female voice shouting in Cantonese "save life, save life". Then both he and the second appellant ran away. As they were running they saw Ah Choon holding a knife running towards and past them and he and the second appellant followed behind Ah Choon. He saw Ah Choon throwing away the knife and on seeing this he also threw away his shirt because it was stained with blood.

They ran on to the main road and eventually Ah Choon stopped a lorry and the three of them sat in the rear of the lorry. Nothing was said in the lorry except by Ah Choon who asked him why he was without his shirt and he told Ah Choon why. When they changed from the lorry into a taxi Ah Choon told him not to talk about the robbery as his shirt would incriminate him. He admitted the cream coloured shirt found near the scene was his and that the 1967 pocket diary and ball point pen were also his and also that he was arrested at the laundry shop.

The second appellant also gave evidence at the trial. He admitted living in the same flat as Goh Kee Sun and said that a week before 15th June 1969 he had refused Goh Kee Sun a loan. He also admitted knowing Ah Choon who was a friend of Goh Kee Sun. He said he had a few chance meetings with Ah Choon at the Bukit Ho Swee coffee stall and that on 13th June 1969 at that coffee stall Ah Choon introduced the first appellant to him as "Botak" and him to the first appellant as "Ah Seow". It was at that meeting that Ah Choon asked if he wanted to join in a robbery. Two days later, on 15th June 1969, at some time past 1 p.m. he next met Ah Choon and the first appellant at the same coffee stall and agreed to join them in a robbery. They went in a taxi and got off at Bukit Timah Road near a petrol station, where Ah Choon led them across the road into a place where there was a big factory. They walked past it and at a spot near the feathers factory Ah Choon unwrapped a parcel and he saw two knives. He and the first appellant refused Ah Choon's offer of one of the knives and then Ah Choon masked his face with a handkerchief, tucked the knives at his waist and they walked to a place near the feathers factory where Ah Choon told them to keep a look out for anyone coming there. He saw Ah Choon entering the factory and a short while later the first appellant walked towards the door of the factory. A male Chinese rushed out of the door and as this man was about to fall the first appellant stretched out his hands to support him and then pushed him away and then ran back to where he, the second appellant, was. At that moment he also heard a woman's voice calling "save life, save life". Both appellants then ran away and as they were running he noticed the front of the first appellant's shirt was stained with blood. He also saw Ah Choon running out of the factory holding a knife in his hand and they ran behind Ah Choon. As they were running he saw the first appellant throwing away his shirt. They eventually obtained a lift from a lorry and while in the lorry Ah Choon asked the first appellant what had happened to his shirt and the first appellant explained how a person had rushed out of the factory and while about to fall had been assisted by the first appellant who got his shirt stained with blood in so doing. Because of the blood stains the first appellant told Ah Choon that he threw his shirt away.

The second appellant denied he had told Goh Kee Sun on the evening of 15th June 1969 that he had stabbed a female and had sustained a cut. He said that he had received the cut on his fingers accidentally on 14th June 1969 when he put his hand into his tool bag to take out a tool while working.

The trial judges rejected the evidence of both appellants that they were merely standing guard while Ah Choon entered the factory building as untruthful. They also rejected as untruthful the account of the first appellant as to how his shirt had blood stains on it and his reason for throwing his shirt away and they also rejected as untruthful the account of the second appellant as to how the first appellant's shirt came to be stained with blood. They found as a fact that the knife with the jagged sides which was discovered by the police caused the fatal "L" shaped wound on the male deceased. They also found as a fact that the appellants entered the factory building, each armed with a knife and that each of them also knew the other was so armed. They were further satisfied that the appellants entered the building with the common intention to commit robbery and in case of resistance, to use the knife each carried to inflict such bodily injury on any person offering resistance as would be sufficient in the ordinary course of nature to cause death having regard to the character of the assault on both the deceased victims as revealed by the stab wounds inflicted on them.

These findings and conclusions of the trial judges were arrived at by them without, as they stated in their grounds of decision, taking into consideration the four statements made by the appellants which we have earlier alluded to and the evidence of Goh Kee Sun.

Before we deal with the grounds of appeal argued before us on behalf of the appellants, we would make some observations on the evidence. It was never in dispute that the appellants and Ah Choon had gone to the general area where the feathers factory was situate with the intention of robbing the inmates of the factory and that they collectively had two knives in their possession and that each of them knew they had two knives with them. It was also never in dispute that all of them knew it was necessary to be armed with the knives in order to achieve their planned object. Both appellants admitted in evidence that they were no more than a few steps away from the door of the factory. The yellow or cream coloured long sleeved shirt found near the scene and covered with blood stains of the same blood group as the deceased victims was conclusively proved to have been worn that afternoon by the first appellant, and indeed he himself said so in evidence. The second appellant when examined by a doctor three days later was found to have a superficial one inch long incised wound, recently caused but not earlier than 24 hours before examination, just over the distal crease of the right index finger. The crux of the case was whether the appellants' evidence that they waited near the door of the factory building whilst Ah Choon alone entered the factory building armed with two knives tucked under his shirt was true.

The trial judges disbelieved both of them. They disbelieved the first appellant because he had blood stains on his shirt and because they rejected his explanation as to how the blood stains got on to his shirt. They disbelieved the second appellant because of the recently caused cuts on his right fingers and because they rejected his explanation as to how they were caused. They rejected the identical versions given by the appellants that neither of them entered the building. They also found that the injuries on the deceased victims could not have been caused by only one assailant armed with two knives.

In our judgment there was ample and cogent evidence to support the conviction of both appellants of the two charges of murder. It was argued on behalf of the second appellant that the trial judges failed to clearly warn themselves of the danger of acting on the evidence of the accomplice, Ah Choon, without corroboration and that they did not have in their minds the risk of acting on the accomplice's evidence without corroboration unless convinced of the truth of the accomplice's evidence. In our opinion this argument is without any substance. Without the accomplice's evidence there was sufficient direct and circumstantial evidence for the trial judges to be satisfied beyond reasonable doubt that the death of the two deceased victims was caused by the acts of the appellants in circumstances which amount to murder read with section 34 of the Penal Code. By their own admissions they were at the scene of the killings; they had gone there to commit robbery together with Ah Choon; they knew two knives were carried; they knew that these knives were necessary to carry out their planned object. Two persons were seen running from the scene of the killings and one of whom, having regard to the evidence of the discarding of the blood stained shirt was the first appellant and these facts were also admitted by them. The second appellant had a recently caused incised cut on his right index finger. The injuries on the victims were caused by two knives and could not all have been inflicted by one assailant only. The first appellant led the police to the place where the knife with the jagged sides was found and the fatal wound on the body of the male deceased was consistent with it having been caused by this knife.

We have already set out the passage in the trial judges' grounds of decision where they clearly indicated that they would not act on any portion of Ah Choon's testimony unless amply corroborated. The law as regards corroboration is well settled since *R.* v. *Baskerville.*[1] At page 667 Lord Reading C.J who delivered the judgment of the Court of Criminal Appeal said: —

"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.

... corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.

The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime."

There was clearly more than sufficient independent evidence connecting each of the appellants with the two killings and implicating each of them and which confirms in some material particular not only the evidence that the crimes have been committed but also that the appellants committed them.

It was also argued on behalf of the second appellant that there was insufficient evidence to prove beyond a reasonable doubt that the criminal acts which resulted in the deaths of the two deceased persons were committed by him and the first appellant in furtherance of a pre-arranged plan to carry out those criminal acts. In our opinion this ground is also without substance. There were two of three persons who set out that afternoon to commit robbery at the feathers factory armed with two knives knowing it was necessary to be so armed to carry out their planned object. The trial judges found on the evidence that they entered the factory building each armed with a knife. These facts coupled with the number and extent of the injuries which were inflicted on the two victims by two knives constituted in our view sufficient evidence on which the trial judges could properly find, as they did, that the appellants entered the factory building with the common intention to rob and with the common intention to use the knife each of them carried, if necessary, to inflict such bodily injury on any person offering resistance as would be sufficient in the ordinary course of nature to cause death.

Having regard to the views we have expressed, we propose to deal very briefly with the submissions on behalf of both appellants that the statements made by them to the police and before two magistrates should not have been admitted in evidence by the trial judges. The substance of the arguments on behalf of both appellants was that having regard to the evidence before the trial judges at the trial within a trial they ought to have refused to admit these statements in evidence on the grounds set out in the proviso to section 121(5) of the Criminal Procedure Code which reads thus: —

"Provided that the court may in its discretion refuse to admit such statement or allow it to be used as aforesaid —

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(b) in the case of a statement made by such person after his arrest if it appears to the court that the statement was not made and recorded substantially in compliance with the provisions of the rules set out in Schedule E to this Code".

We are not persuaded that the trial judges on the evidence before them exercised their discretion wrongfully or in any manner which was contrary to law. The issue as to admissibility was fully canvassed before them at the trial within a trial which lasted several days. In those circumstances, this court as an appellate tribunal, not having the benefit of seeing and hearing the witnesses called to testify on this issue, is precluded from interfering with the trial court's exercise of its discretionary powers, unless convinced that there was no proper or sufficient evidence to support the trial court's decision or unless it is satisfied that the trial court acted on wrong principles.

Accordingly, the appeals of both appellants are dismissed.

Appeals dismissed.

Solicitors: *Tan, Rajah & Cheah; Ironside & de Souza.*

TAY CHENG TECK v. TROPICAL PRODUCE CO. PTE. LTD.

[O.C.J. (Chua J) June 28, 1971]

[Singapore — Suit No. 672 of 1969]

Factories — Failure to fence dangerous part of machinery — Absolute duty — Contributory negligence — Liability at common law — Factories Ordinance, 1958, ss. 22(1) and 59.

Negligence — Breach of statutory duty — Dangerous parts of machinery — Failure to fence — Contributory negligence — Liability at common law.

The plaintiff sued the defendants for damages for personal injuries at common law and also for breach of statutory duty to fence a dangerous part of machinery. He was employed at the defendants' factory to mill rubber and it was his duty to feed unmilled rubber to two revolving rollers which were part of the machine which was in the defendants' factory. While in the course of his duties, the plaintiff's right hand got caught between the rollers and was crushed. It was alleged that there was a failure to provide and maintain a safe system of work and also that the dangerous part of the machinery was not fenced which was contrary to section 22(1) of the Factories Ordinance, 1958.

Held: (1) the plaintiff had been taught to mill the rubber and had been properly instructed in the safe use of the machine. The plaintiff himself was negligent and this was how the injury was caused to him. His claim based on common law liability therefore failed;

(2) the duty imposed by section 22(1) of the Factories Ordinance, 1958, is an absolute duty and the defendants had contravened the section;

(3) the plaintiff was guilty of contributory negligence and his liability was therefore assessed at 50%.

Observations on requirements of section 22(1) of the Factories Ordinance, 1958, which is similar to section 14(1) of the English Factories Act, 1937.

Case referred to:-

(1) *John Summers & Sons Ltd.* v. *Frost* [1955] 1 All E.R. 870 at p. 872.

SUIT.

H. E. Cashin for the plaintiff.

Freddie Yin for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff was employed by the defendants at the defendants' factory to mill rubber. It was the plaintiff's duty as such employee to feed unmilled rubber to two revolving rollers which were part of the machine which was in the defendants' factory. On the 14th December, 1968, while the plaintiff was in the course of his duties the plaintiff's right hand got caught between the rollers and was crushed.